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FOREIGN SERVICE DESPATCH

OFFICE OF CHINESE AFFAIRS
JAN 18 '55
DEPARTMENT OF STATE

FROM : AmEmbassy, TAIPEH 333

TO : THE DEPARTMENT OF STATE, WASHINGTON. January 6, 1955.

REF : Despatch No. 703 of June 22, 1954, No. 53 of Aug. 3, 1954, No. 86 of August 18, 1954 on this subject.

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SUBJECT: Defense Establishment Developments.

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Summary:

Six months have elapsed since the Executive Yuan on June 30, 1954 submitted the draft National Defense Establishment Law to the Legislative Yuan for enactment. Although the law-making body has failed to enact the bill into law, after considering it at two sessions, Defense authorities have nonetheless implemented many of its provisions. Under the energetic direction of YU Ta-wei the power of the Ministry of National Defense has been greatly increased. The Office of the Chief of General Staff under Acting Chief PENG Meng-chi is more orthodox - less powerful, but more efficient and decisive - than before the reorganization of July 1. Although all appointments to key National Defense Council positions have been made, the Council has not lived up to advance publicity. As an additional presidential advisory body, however, it and its subsidiary bureaus, such as the National Security Bureau will probably assist in tidying up existing intelligence and security organizations. The Security Bureau reportedly will take the place of the Materials (Data) Section of the President's Office which is controlled by CHIANG Ching-kuo. Meanwhile the debate over the constitutionality of the National Defense Council as an operating agency continues. It is probable that the Defense Law will be resubmitted to the Legislative Yuan next session with the National Defense Council depicted as an advisory organ in the Office of the President.

* * * * * * *

The Ministry of National Defense

The draft National Defense Organization Law which the Executive Yuan submitted to the Legislative Yuan for enactment on June 30, 1954 gave promise of producing a greatly strengthened Ministry of National Defense.(1) Under the energetic leadership of Minister Yu Ta-wei, this adumbration of a new alignment of powers and responsibilities within

1. See Despatch No. 53 of August 2, section on Ministry and Articles 14, 15, 16 of Draft Law enclosed therewith.

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the Defense Establishment has been borne out. Below the level of the Generalissimo (and leaving out any special influence his son Chiang Ching-kuo may have) Minister Yu is the dominant personality in the military field. He has taken an active interest in solving urgent problems such as bringing combat units up to full strength, eliminating and replacing ineffective personnel and implementing the military construction program - including the lagging barracks building project. It is significant that some progress is beginning to be made in most of these fields. The minister's omnipresence is continually evidenced in accounts of his visits to military installations, attendance at exercises and in reports of his offshore island visits.

Shortly after the arrival of Minister Yu in mid-September, Americans made a practice of "going through" him on important administrative - and indeed on some operational - military matters. Yu, in turn, has consulted closely with Major General CHASE, Chief of the MAAG, on military subjects of mutual interest and importance. Chase has expressed himself as much impressed with the forcefulness and energy of the new Defense Minister. In the General's opinion, he is "almost too energetic" and if there is any drawback to his nature it is that he tends at times to mix into operational matters which are purely military.

General KIANG Piao, Assistant Defense Minister who assisted Minister Yu when he was Chief of the Military Procurement Mission in Washington, confirmed to the Reporting Officer (RO) recently that the Minister had in truth taken over many of the functions formerly assigned to the Chief of General Staff when CHOU Chih-jou occupied that position. Lt. Col. Jack YOUNG, MAAG G-2 Political Advisor, in also confirming that the Minister wielded considerable influence and had wrought many changes in the inner military balance of power, predicted that Yu's power would continue to grow "if he doesn't go too far in operational and political department fields, thus causing the others (Chou Chih-jou, Chiang Ching-kuo and PENG Meng-ch'i) to gang up on him." Although the current emphasis is on cooperation among themselves and with Americans in getting the job done, latent divisive forces remain as strong as ever.

Office of the Chief of General Staff

Following fairly closely the blueprint of the draft organization law, the operations of the Office of the Chief of General Staff have come to resemble much more than formerly those of an orthodox general staff.(2) General Chase has mentioned on a number of occasions that the present Staff is "head and shoulders above the preceding one" (Generals CHOU, HSIAO, et al). Staff officers of the calibre of

2. See Despatch No. 703 of June 22 and 53 of August 2 sections on Chief of Staff and articles 12, 13, 17 of Draft Law enclosed with No. 53.

Deputy Chief YU Po-chuan and several other younger officers trained in the United States understand and are sympathetic with American procedures. Whereas during the regime of General CHOU it was almost impossible to get G-2 (Intelligence) and G-3 (Operations) coordinated, the present Staff has a daily G-2, G-3 briefing to which not only key Chinese officers are invited but also their American counterparts. General Chase makes a habit of attending these briefings. He and his G-2 staff officers also have noted recently that the quality and reliability of Chinese intelligence and reports have improved during the past few months. Although before and during the initial stages of the September 3 Kinmen (Quemoy) bombardment there was abundant evidence of [redacted] reluctance to take initiative and assume responsibility, since that time there has been an increased willingness on the part of the Staff to do so. Willingness to make decisions and take responsibility is notable on the part of Yu Ta-wei - and has become increasingly true of Acting Chief of Staff Peng Meng-chi, who in addition has proved to be almost as peripatetic as the Minister in an effort to bask in as much of the martial limelight as possible. | 3 o/(d)

Rumors recur that General Peng will be replaced because he is anathema to other, more senior generals. One such rumor was expanded into speculation that he would replace Governor C. K. YEN as part of a general move to strengthen the position of the military in the Government in preparation for an imminent increase in military activity in the Formosan Straits.(3)

Reports concerning General Peng's unpopularity with the Generals have a large measure of truth. On the other hand, he retains the confidence of President Chiang, elder son Ching-kuo and Vice President CHEN Cheng; he has cooperated with U.S. advisors much more than his predecessor, General Chou, and he has impressed all concerned with his force, decisiveness and willingness to assume responsibility. Although only the President is in a position to know for sure, current feeling in the best informed American military quarters is that, unless a general situation develops which requires a reshuffle of personalities to redress the traditional "balance of power" in the President's entourage, General Peng will stay on indefinitely as Acting Chief of General Staff.

In evaluating the above information regarding staff work and General Peng's attitude, however, two things should be kept in mind: (1) Peng's chief support, the Generalissimo has laid down the dictum of cooperation with MAAG and (2) in the face of opposition from other generals the Acting Chief needs MAAG support.

National Defense Council (NDC)

3. See Despatch No. 304 of December 20, 1954.

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Pursuant to anaannouncement by the Chief of General Staff on July 15, 1954 that the proposad National Defense Organization Law would be put into "experimental effect" as of July 1, 1954, key appointments to positions on the Council and its subordinate bureaus have been made and offices in the MND Building occupied. The Council had its first formal meeting on December 16, 1954, the agenda and results of which are not known to the Embassy at the present time.

Shortly after the Presidential authorization of the NDC in July, former Chief of General Staff Chou Chih-jou was appointed Secretary-General. In September Chiang Ching-kuo was appointed his Deputy. HSIAO I-su, former Deputy Chief of Staff, was named head of the subordinate Mobilization Bureau and CHENG Kai-ming was placed in charge of the National Security Bureau, a coordinating bureau for intelligence and security under the NDC. In spite of these aspects of experimental implementation, however, public and legislative opposition to the NDC as a "super cabinet" has delayed full implementation and has resulted in reconsideration of the role of the Council. Impatience on the part of appointees is best expressed in a complaint of General Hsiao I-su to an American military staff advisor that he was "ready to go but that he couldn't even hang his shingle out."

According to Assistant Defense Minister Kiang Piao, the concept of the NDC has changed...."today it is a fifth wheel". Of course in evaluating his statement the Defense Ministry view must be taken into account, for it is fairly clear that Minister Yu and Kiang believe that the Council's functions can be performed by the Executive Yuan - and by the Defense Ministry in particular. There are additional indications, however, that as a result of legislative opposition and a controversy over constitutionality, the nature of the Council, may very well be changed from that of an operating or executive agency into that of an advisory organ.

Chou Chih-jou, the Secretary General, remains in an anomalous position as does his assistant in the mobilization field, General Hsiao. According to an American adviser close to Chou the former Chief of Staff, in his present capacity at least, is in virtual retirement. The turn of fortune for the NDC and Chou's idleness have contributed their share to the often heard rumor that General Chou will replace O. K. YUI as Premier as part of the reported but unconfirmed intention of the President to strengthen the position of the military in the government.(4)

The position of other important members of the Council and its satellite agencies are not so seriously affected by the apparent move to change the status of the NDC. Chiang Ching-kuo, the Deputy Secretary General, owes his power to his father and retains his informal

4. Despatch No. 304 of December 20, 1954.

control over the Materials (Data) Section (concerned with Security and Intelligence) and the General Political Department of the Armed Forces. Cheng Kai-ming, as Director of the National Security Bureau (NSB), will continue to operate at the top level in security and intelligence matters and those pertaining to continental (guerrilla) operations. The exact nature of the Defense Council and its satellites, especially the NSB, however, has not definitely been determined. It is quite possible that the NSB will take over the functions of the Materials (Data) Section.(5) In this respect the NDC and its agencies will be presented in the guise of collecting, collating, planning and advisory agencies - divorced from actual operations or execution - and at the same time might be used to tidy up existing security and intelligence organizations by formalizing their existence.

The Legislative Debate and Constitutional Issues

After the draft Organization Law was resubmitted to the Legislative Yuan on June 30, 1954 it soon became apparent that legislators were most reluctant to turn over what they consider to be elements of supreme executive authority to such a body as the National Defense Council, which they maintain would become a "super cabinet" above the Executive Yuan.

Part of the conflict between legislators and the military is one of personalities and might be smoothed over with an improvement in personal relations. In discussing this matter with the RO, General [redacted] a protege of Chou Chih-jou, while confessing that the military could do much to improve its legislative relations, charged Legislative Yuan members with failure to accept their responsibilities. Because it has been without elections since 1948 and has permitted its organization to deteriorate, he said, the Legislative Yuan is now completely out of touch with the people and is unable to cope with the urgent requirements of the day. In partial rebuttal, General [redacted] supporter of Yu Ta-wei, pointed out to the RO that the legislators had every right to be incensed by the military group as it existed before July 1. Chou as Chief of General Staff consistently refused to appear at interpellation sessions of the Legislative Yuan or even to reply to legislative inquiries. When Chou was appointed Secretary General of the controversial National Defense Council, legislators became even more fearful and more adamant in their views concerning the "super cabinet." General [redacted] asserts that Yu Ta-wei has accomplished much and has established better relations by adopting an intelligent and respectful approach to legislators and their problems. He has in fact appeared at interpellation sessions and has displayed considerable tact in his personal relations with other civilian officials.

In addition to personal differences, there have also been genuine

5. [redacted]

disagreements over principles of government which have found expression during the past six months in legislative debates and in the Taipei and Hong Kong press. The Tzu Yu Chung Kuo (Free China) magazine of July 16, 1954 touched off the public controversy with an article entitled A Test for Democratic Constitutional Administration(6) in which it was stated that the "near cabinet" system of Free China would be destroyed if the National Defense Council were placed above the Executive Yuan. HSU Fa-kuan, Chief editor of the Democratic Review in Hong Kong, took up the theme in an article The Rules of Politics, appearing in the HUA CH'IAO JIH PAO of September 11, 1954, in which he pointed out that the President of the Executive Yuan, "the highest administrative organ of the State", was responsible to the Legislative Yuan for all administrative matters. If the Defense Council were placed in an executive capacity above the Executive Yuan, it would be impossible for the Yuan to carry out its responsibilities and the Council would become a "Super Cabinet." Furthermore, Hsu indicated, the intelligence and security agencies attached to the Council must be made responsible to established administrative agencies and guided by governmental policy, otherwise they will continue to arouse the suspicion and distrust of the people.(7)

An article in the December 9 edition of the HSIN SHENG PAO (Provincial Government and pro-KMT organ), however took the opposite view of the Constitutional question.(8) It stated that the President's "Command power" (Article 36 of the Constitution) over armed forces is "precise and unequivocal" and justified the inclusion of the National Defense Council in the President's Office. "The Chinese political system", the article continued, "is not (as opponents of NDC aver) either in practice or in form, a cabinet system" any more than it is a presidential system like that in the United States.

The debate over the constitutionality of the National Defense Council is interesting but is of little practical import at the present time, other than in its effect in forestalling the passage of a Defense Establishment Law. In form, the Five Yuan Constitution of China is sui generis and probably just as impossible of literal application to modern political conditions in China as Montequieu's formalized interpretation of Britain's three way separation of power was to France of the Eighteenth Century. History alone will reveal the developing nature of the political system - and if it is to be in one of the many democratic forms - only at such time as the electoral system and the party system are able to operate as originally intended under something approaching normal conditions.

Future Prospects of Defense Establishment Legislation

It is likely that the Defense Establishment Legislation will be

6. See Enclosure No. 1
7. See Enclosure No. 2
8. See Enclosure No. 3

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resubmitted at the next session of the Legislative Yuan. There is some indication that the NDC and its security, intelligence and mobilization sub-agencies will establish requirements and will assume a planning, evaluating and advisory function rather than an operating function as is provided for in the present draft legislation.

Whether the legislation will be adopted is problematic. In one form or another defense organization legislation has been before the Legislative Yuan since February 1952. In order to reach a solution distrust of the military must be lessened in the Legislative Yuan; and in order to achieve this the military must demonstrate its respect for the views of the legislators. Betterment of relations will help but even then legislators in their turn must prove that they are capable of assuming responsibility for making decisions on important issues. This will be most difficult in the absence of elections and the lack of Kuomintang interest in enhancing the prestige of the Legislative Yuan and in establishing responsible party leadership in that body.(9)

Meanwhile with military and defense matters still of paramount importance on Formosa, the Defense Establishment, without benefit of legislative authority, continues to develop through the administrative process driven by the personal force of the President, his Defense Minister and their Chief of the General Staff who for the time being at least are working as a team in better cooperation with American advisors.

For the Ambassador:

Robert W. Rinden
First Secretary of Embassy.

Copy pouched to Hong Kong.

Enclosures:

1. Translation from Tzu Yu Chung Kuo
2. Translation from Wah Kiu Yat Po
3. Translation from Hsin Sheng Pao
4. Translation from MIN CHU CH'AO

Mail to addressee FE

9. See Kuomintang and the Legislative Yuan, article in Current Democracy (Young China Party) Nov. 1, 1954 Enclosure No. 4.

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Translated from the HSIN CHU KUAN (Current Review) magazine (Young China Party), Taipei, [illegible]

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THE KUOMINTANG AND THE LEGISLATIVE YUAN

Owing to the formal establishment of the "National Defense Council" and the appointment of its principal officers while the draft National Defense Establishment Law was still being processed by the Legislative Yuan, at its recent interpellation sessions the Legislative Yuan has raised questions and, outside the legislature, the public has launched critical attacks against this organization. While it is none of our business as to what attitude is maintained by the government in this matter, it will be interesting to note how the Legislative Yuan is to legislate upon this bill. Will it be shelved indefinitely as in the case of the "General Principles of Provincial and Hsien Self-Government" or will it be solved through some other arrangement?

The question which we want to discuss in this article is the relations between the ruling party and the legislature. Today the Kuomintang is the party in power in Free China. In the Legislative Yuan, 93 percent of the legislators are members of the Kuomintang. The Kuomintang should have been able to carry out successfully whatever tactics it may desire in its dealings with the legislative body, but certain measures taken lately by the legislature have gradually become the subject of attacks on the part of the public. These attacks have fully reflected the people's disappointment with the Legislative Yuan on the one hand and showed that the ruling party's organ established within the legislative body has totally failed in its mission on the other.

The present Legislative Yuan was produced through the election, before the fall of the mainland, directly by the people in different regions and bodies, not like that which was wholly designated by the government during the period of political tutelage, thus, without any question, these legislators should have been responsible to the people who elected them. But as the greatest majority of them are members of the Kuomintang, following the traditional practice of political tutelage for a period of more than twenty years, these legislators are also responsible to their party, or, at least, they must fully accept the party's direction and faithfully obey its orders.

How does the Kuomintang lead the Legislative Yuan then? In the Legislative Yuan, there has been established a Legislative Yuan chapter of the Kuomintang. The president of the Legislative Yuan is one of the standing members of the Kuomintang Central Committee, in that capacity he should have been in a better position

to play a leading role in the Legislative Yuan's deliberations, but, in fact, it has not been the case. According to an article which appeared in a recent issue of Fubean, Hongkong, several legislators have remarked openly that only those who are incapable, unpopular, without aims, ambition and sense of leadership would be inclined to act as officers of the Legislative Yuan chapter of the Kuomintang, and that only such characters would be chosen by the party as they are more submissive. The article goes on to state that the atmosphere of the whole Yuan today is very dull indeed and that the spirit of the various committees has been on the decline to a great extent. Those who are popular, able and ambitious prefer to remain silent at full meetings and even refuse to be chosen as convenors of the committees. The Legislative Yuan now has many problems to tackle, but the most important of all is that which involves its relations with the Kuomintang.

Some people may contend that the current listlessness of the legislative body is due to the absence of a powerful opposition party that may check, supervise and compete with the ruling party. Such a theory is not correct as the incommensurable state of strength between the ruling party and all the other parties in the Legislative Yuan was brought about entirely due to a special factor but was not the result of the choice of the people who elected them. When the legislators were elected six years ago, parties other than the Kuomintang, from the very beginning, were not given any opportunity to compete in the election and were thus barred from getting more seats so that they could not be in a position to form a reasonably strong opposition party. The importance of an opposition party is now keenly felt and its absence is deeply regretted by all the people. Even the highest authorities of the ruling party have openly expressed their desire to have an opposition party and their hope that the Young China Party, the Democratic Socialist Party and non-partisans would take over the responsibility of an opposition party. How could an opposition party be brought into being when the Kuomintang still persists in a "one-party-revolution" even at this particular time on this particular island? Despite their inferior position, the minorities have done their best to fulfill their duties on the floor and have from time to time won the sympathetic support of their colleagues who are members of the ruling party. But when any important bill came up, even if the views expressed by the minorities were reasonable, due to the party's control, they would meet with the opposition of the ruling party members. Besides, the views expressed by the minorities were seldom seen in the press. Some of the people have complained that the minorities are not strong enough, but no one dare to criticize some of the measures taken by the party in power were not put through according to the normal course of a constitutional administration.

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First of all we would like to suggest that the relations between the ruling party [redacted] the Legislative Yuan be adequately readjusted. The Kuomintang should exist as an organ within the Legislative Yuan in a more proper shape without recourse to unnecessary interventions and controls in every case.

Secondly, the Kuomintang members of the Legislative Yuan, taking advantage of their supremacy on the floor without opposition and of the fact that no re-election would take place until the mainland is recovered, have gradually become self-content and inertial. Quite a number of the legislators who are members of the ruling party have, after reporting their attendance and drawing their salary and allowances, excused themselves from the meetings or made no statements even if they were present. All they care is that no convenor of any committee be a member of the minorities. This shows where the Legislative Yuan lacks the centre of lead ruling and why the public is so dissatisfied and disappointed with the Legislative Yuan. Unless the party in power amends in time the above mentioned peculiar situation, the future of our democratic constitutional administration will become more gloomy.

Thirdly, the executive and legislative branches of a constitutional government should check-and-balance on one hand and cooperate with each other on the other. Our present Executive Yuan is a one-party cabinet and the Legislative Yuan is practically also a one-party house. The supreme power of the ruling party is completely in the hands of its Central Committee which can issue orders to its members who are associated with the government and make its members who are legislators obedient to its order through its chapter within the Legislative Yuan. Under these circumstances, neither of the two branches can check each other, nor will they be able to smoothly cooperate with each other. Many ambitious, experienced legislators have, in fact, refrained themselves from making utterances as a protest against their party's control. Unless the ruling party fundamentally gives up these tactics which have been carried out since the period of political tutelage and discontinues its control over the legislative body, it will not be possible for the government to convince the people that the party in power is against a one- party administration.

Finally, under Article 62 of the Constitution, "The Legislative Yuan shall be the highest legislative organ of the State to be composed of popularly elected members to exercise the legislative power on behalf of the people." The minutes of questions raised and statements made by the legislators on the floor should be released in full detail in the press for the information of the public. At present, reports concerning Legislative Yuan meetings are found only in a very brief form in the press. It is not known whether it is the policy of the information office of the Legislative

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Wuan or press reporting of [redacted] comment. If such news blackout is not removed at an early date, the disappointment and dissatisfaction on the part of the press and the public will further deteriorate.

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Translated from the Tzu Yu Chung Kuo (FREE CHINA) magazine, Taipei, July 16, 1954.

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A TEST FOR DEMOCRATIC CONSTITUTIONAL ADMINISTRATION

On July 2, 1954, the local papers carried a despatch of the Central News Agency: "By a mandate dated July 1, the President specially appointed General CHOU Chih-jou as Secretary General of the National Defense Council."

This despatch caused a great shock to many who are known for their interest in a constitutional government. On the surface, it was just one of the routine presidential mandates on appointment. However, if we look into the mandate just a little bit carefully, it will be seen that it is incompatible with the normal course of a constitutional administration and the principle of a cabinet system.

Logically, the existence of the National Defense Council should precede the appointment of its secretary general. It is definitely against the normal process of reasoning to appoint a man to an office which is still technically non-existent. According to information disclosed by certain legislators, the projected National Defense Council derives its legal strength from the National Defense Establishment Law. It may be noted that the amended draft of this Law was submitted by the Executive Yuan to the Legislative Yuan on June 30, 1954, and that it is still in the process of study by the National Defense Committee of the Legislative Yuan. Naturally the Legislative Yuan has the power either to further revise or vote down any bill submitted by the Executive Yuan. Again, the same Central News Agency reported on July 2: "The Executive Yuan has already sent the amended draft of the National Defense Establishment Law to the Legislative Yuan for examination. At a meeting held in the afternoon on July 2, the Procedural Committee of the Legislative Yuan decided that recommendations be made to the full Yuan that the referenced bill be referred to the Committees concerned for study. Since the Legislative Yuan was scheduled to adjourn its current session on July 20, it is feared that this bill may not be able to go through the legislative process during the present session."

Without the National Defense Establishment Law, there will naturally be no National Defense Council. The appointment of the secretary general while the National Defense Council is yet unborn appears to be an extraordinary strange affair!

Some people argued that such things should not be touched upon by the press as they involve military secrets. There is no denying that even a democratic country has "secrets". In a world infested with conspiracies and subversions, a country cannot preserve its own existence without keeping "secrets". In democratic countries,

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"secrets" are confined to the minimum extent, but in totalitarian states, such as in Soviet Russia, "secrets" are recklessly applied. "Secrets" must have their precise sphere and limit. This principle is naturally applicable to military affairs. The reason why military affairs have become "secrets" is because they are pertinent to military operations. Any contention that the establishment of a military organ which would affect the democratic constitutional administration of a State should be classified as "military secrets" and that it should not be discussed by the people is unheard of. In this particular issue, since the Central News Agency has made known to the public the appointment of the secretary general of the National Defense Council, it will be seen that the government has not treated the projected establishment as confidential.

In discussing the establishment of the National Defense Council under the new national defense establishment law, we cannot help considering its relations vis-a-vis the Executive Yuan because it is a question inseparable from the normal course of a constitutional administration and the principle of the cabinet system. In a logic point of view, relations between the National Defense Council and the Executive Yuan may be as follows:

(1) The Council is placed above the Executive Yuan;
(2) The Council is placed on the same level as the Executive Yuan; or
(3) The Council is placed under the Executive Yuan.

If the National Defense Council should be placed above the Executive Yuan, it would seem that a supreme body is placed above the Executive Yuan thereby writing off the cabinet system of the Executive Yuan. If the Council should be placed on the same level as the Executive Yuan, the government would have two administrative bodies thereby violating the integrity of the cabinet system of the Executive Yuan. But if the Council should be placed under the Executive Yuan, there would be created another superfluous organ in the administration.

It is reported that in the National Defense Council, the premier will be one of its members holding the same position as any other members of the Council, including the foreign, finance and national defense ministers in spite of the fact that he is superior to all the three in the Executive Yuan. In such a case, the position of the premier will become very awkward. In short, the establishment of the National Defense Council is basically illogical.

Some people may argue that as there is a National Security Council in the American Government under the charge of the President, why can't we not follow the same system? We must understand that our Constitution differs from that of the U. S. as China is somewhat under a cabinet system whereas the U. S. is under a presidential system. Under the presidential system, the administrative power rests entirely with the president who may create some offices in

the administration without violating the constitution. But in a near-cabinet system under our Constitution, the position and power of the Executive Yuan decidedly cannot be touched or violated. If a National Defense Council should be instituted to deal with national affairs during wartime, it should be composed only of military personnel and its functions and powers should be limited strictly to military affairs, so that the spirit of our Constitution may not be totally ruined through the establishment of the National Defense Council.

The establishment of the National Defense Council is not only theoretically infeasible, but it would also seriously threaten our infant democratic constitutional administration as any expansion of political power in violation of the Constitution would threaten the democratic administration. It is reported that the sphere of functions of the Council will be extensive and that it will have the duty of execution. If the amended draft of the National Defense Establishment Law should be passed and the National Defense Council established, the Executive Yuan would, in every case, be subject to the orders of the Council. And if the Executive Yuan has to be subject to the order of the Council, it will no longer be the "highest" administrative organ of the State and thus will not be in a position to be responsible to the Legislative Yuan whose existence will become merely nominal. In such a case, our Constitution, as far as the governmental organization is concerned, will become a piece of waste paper and our government will, in fact, become a military government. In his inaugural address on May 20 of this year, President Chiang, in unequivocal terms, stressed the importance of (1) the rule of law, and (2) the establishment of systems. How would President Chiang's proclamation fit into the National Defense Council if such an organ were really established?

Forty-three years have now elapsed since the establishment of the Chinese Republic. If we review our history for the past forty-three years from the point of fule of law, it may be said that it has been a history of struggle between supporters and offenders of the Constitution. In the last forty years, those selfish, self-complacent people who totally ignored national interests have violated and infringed upon the Constitution, while those patriotic people who love the Republic have built up and defended the Constitution. Ex-President YUAN Shih-k'ai who attempted to make himself an emperor violently destroyed the Constitution and the Chinese Communists have now committed all sorts of misdeeds in violation of the Constitution since their occupation of the mainland. Dr. SUN Yat-sen, founder of the Chinese Republic, took the defense of the Constitution as one of the major objectives of his struggle. The hundreds of thousands of the people now retreated to Formosa in their struggle against the Communists and Soviet Russia are also here to defend our Constitution, on the basis of which we will be able to build and reconstruct our country. To defend the Constitution is, in prac-

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tice, to uphold the cabinet system vested in the Executive Yuan under the Constitution. Whether this can be accomplished will be a test for our democratic constitutional administration.

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Hah Min Yat Po (Hua Ch'iao Jih Pao)
Hong Kong, September 11, 1954

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THE RULES OF POLITICS

By HSU Fu-kuan (徐復觀)*

If we take temporary political efficiency alone into account without looking into the political purpose and motive, we shall have little difficulty in discovering that politics operates with greater efficiency when it follows the generally recognized rules of that period. The political rules of today are the rules of democracy which have been systematized and rationalized. Therefore, there should no longer be any room for doubt as to the genuine value of democracy, which should form the object of our political pursuit. As a matter of fact, other forms of politics besides democracy such as monarchy and dictatorship all have rules to follow and observe, but the difference is that the rules of monarchy or dictatorship, due either to lack of objectivity or to growth of internal contradictions, often degenerate into a state of confusion and corruption and finally lose their binding force. When a form of politics reaches a state where no rules prevail, it perishes.

The political form of Free China should undoubtedly be democracy, and the constitution prescribes the rules of democracy in Free China. On its practical side, the constitution requires that the executive branch of the government be responsible to the legislative branch. The United States follows the presidential system of democracy; therefore, the president, being the highest executive officer, is responsible to Congress. In China, the chief executive is the President of the Executive Yuan; therefore, he is the one that should be responsible to the Legislative Yuan. This point has been clearly defined by our Constitution. Any administration other than the one which is directed by the Premier cannot be held responsible to the Legislative Yuan. As a result, such an administration is incompatible with the Constitution and exists in defiance of the accepted rules of democracy.

At the time of war, it may not be inappropriate to organize a National Defense Council or, for the purpose of obtaining even greater efficiency, to set up some organ like a "small Cabinet". But, one, such an organization should be admitted by the constitution and should go through the legislative processes, and two, being merely a council, it cannot have an executive department in addition to the department taking charge of the agenda and it can only discuss proposals and adopt resolutions. However, the

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present national defense council is above the Executive Yuan and is under the direct jurisdiction of the president. Furthermore, it is equipped with two bureaus which possess much executive authority. These two bureaus, one is in charge of general mobilization and the other in charge of security, will handle business which will involve all executive departments of the government. Furthermore, both the secretary-general and the deputy secretary-general of the council are known for their superior energy and vigor. They can very well make use of the council, which is different from the American National Security Council in either legal status or nature, to meddle in all executive matters under pretext of mobilization and security. As such, the national defense council will actually become a "Super Cabinet". It is "super" not only in that it sits above the Executive Yuan and exercises executive powers but also in that it is capable of taking arbitrary actions and adopting arbitrary measures without the fear of being called to account before the Legislative Yuan. It is an organization that goes beyond the power of the Constitution and that is in contravention of the Constitution. Any political measures that come out of the national defense council will deviate from the rules of regular politics since it has not only undermined the constitutional position of the Executive Yuan and demoted it to the status of an ordinary business office but has also wrecked the constitutional integrity of the Legislative Yuan and turned it into a mere ornament. It is to be noted that the Constitution was brought into being through solemn processes and that the President has sworn to observe the Constitution. The national defense setup has not only shaken the very foundation of the Constitution but has also weakened the foundation of the present regime. We really cannot see why we should have taken such an extraordinary step.

In actual operation, mobilization is part of the job of the Executive Yuan and, in fact, only the Executive Yuan has the power and ability to mobilize the nation. For spiritual mobilization we have the Ministry of Education; for economic mobilization we have the Ministry of Economic Affairs; for military mobilization we have the Ministry of National Defense; and for social mobilization we have the Ministry of the Interior. Plans for the various forms of mobilization should be drawn up and submitted to the Executive Yuan Council for approval by the concerned ministries. Finally, such plans should be referred to the Legislative Yuan for confirmation and then enforcement. This is the natural course of action. Let us concede that it is better for the President to preside over the council, but we will still insist that plans should be brought up by the concerned ministries for discussion and adoption and should be returned to them for implementation after approval. Why should we create the two bureaus to act on their behalf? Even if there is the necessity to set up an overall research and planning

office, why cannot we place it under the Executive Yuan so as to gain better coordination [illegible] created organization rather than the [illegible] under the change of mobilization, [illegible] creating a situation where hamstringing and dilly-dallying are the rules rather than the exceptions. In this way, what we are actually doing is to obstruct mobilization.

As regards security, it can be seen that the security bureau is in charge of special service and intelligence. But we ought to know that special service and intelligence are technical matters, and technical matters, unless they are made to follow politics and policy, cannot be expected to develop the calculated usefulness and prevented from producing undesirable side effect. Since special service and intelligence offices came into existence, their responsible officers have come to argue that only with a free hand can they operate their businesses efficiently and effectively. As a matter of fact, they seem to overlook that in this way their work will not be guided by the proper political course and will miss the central points of gravity with the result that it fails to coordinate with other policies, becomes a waste of money and energy, loses popular sympathy, and arouses suspicion and misunderstanding among the public. In both operation and spirit, the staffs of these offices will be confronted with open and secret criticisms. Past experiences are still fresh in our minds. The best thing to do is to channel both the secret service and the intelligence units to the fixed course of the Constitution. On the positive side, they may meet the Executive Yuan's policy requirements; and on the negative side, they may be bound by law. I can hardly see why the mobilization bureau is not placed within the framework of the Executive Yuan.

Politics derives its strength from the support of the majority. No single individual nor a minority can impart enough strength to politics. "Law" is composed of rules recognized and accepted by the majority. Actions and programs which are guided by "law" will win the support and understanding of the majority. The country that is ruled by law will be the one that can produce strength. There are people who always feel that the loss of strength springs up from the restraining force of law and imagine that they could do better by disregarding law or by building a castle of cardboard within the framework of law while actually enjoying unrestrained freedom outside the confines of law. We must exercise great caution: unless we respect and observe the law without fail, we cannot expect our followers or subordinates to do so. The ones who disregard and defy the law will not only destroy themselves in the eyes of the people but will also wreck the government and the country. We must wake up to this simple yet fundamental yardstick of politics.

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I hope that the social leaders [redacted] think over whether it is worth the [redacted] divides democracy and Communism.

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NATIONAL DEFENSE ESTABLISHMENT LAW AND COMMANDING POWER

Inasmuch as the "National Defense Establishment Law" and the power of commanding is physically interlinked, in the examination of the draft "National Defense Establishment Law" at the present moment, it would be necessary for the Legislative Yuan to discuss with what authority the power of commanding should rest. In fact, the basic question of the "National Defense Establishment Law" would be solved if that of the power to command were first solved. We would like to offer, for reference purposes of the quarters concerned, our views concerning the question of commanding power.

Under Article 36 of the Constitution, the President of the Chinese Republic shall command the nation's land, sea, and air forces. The word "command" fully establishes the President's power of commanding. Even though the provision in the Constitution is precise and unequivocal, people are at variance in their opinion with regard to the question as to with what authority the power to command should rest, due to different interpretation of the Constitution. Some of the people feel that our present political system is patterned somewhat after the British cabinet system, and deem our Executive Yuan as the cabinet and its president as the prime minister. But, in fact, our present political system is not, either in practice or in form, a cabinet system.

In the first place, we have the five-power system while other countries in the world have a three-power constitution. Our present political system is neither a cabinet system as that of Britain or France, nor under the presidential rule as in the United States.

Secondly, in the countries where the cabinet system is in force, the cabinet is brought forth by the majority party of the parliament, as in the case of Britain or France, its King or president can make no choice in the appointment. Under Article 55 of the Constitution, the President of the Executive Yuan shall be nominated and appointed by the President of the Republic with the consent of the Legislative Yuan. Thus, the choice of the president of the Executive Yuan is actually made by the President of the Republic, while the Legislative Yuan merely exercises the right of consent. Moreover, since the cabinet of the countries where the cabinet system is in force is produced by the majority party of the parliament, all the cabinet ministers are members of the parliament. This practice is also different from ours as under Article 75 of the Constitution, no member of the Legislative Yuan may concurrently hold a government post.

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Thirdly, in the countries where the cabinet system is in force, the parliament has the right to vote for nonconfidence of the cabinet and, on the other hand, the cabinet has the power to dissolve the parliament. Under our Constitution, neither the Legislative Yuan has the right to vote for nonconfidence of the Executive Yuan, nor has the latter the power to dissolve the former, hence our administration is not under the cabinet rule.

It will be seen from the foregoing analysis that our present political system is, both in practice and in form, not in the least alike either the British or the French cabinet system. Since our present administration is not under a cabinet rule, our president as described in the Constitution is fundamentally not the same as the British King or the French president. The chief executive of the countries under a cabinet rule is purely symbolic without any power, while under our Constitution, the President has the power to command the nation's armed forces, to nominate the president of the Executive Yuan, of the Judicial Yuan and of the Examination Yuan, to call a meeting of the presidents of the Yuan concerned for consultation with a view to reaching an agreement in any dispute between the various yuan, to approve request of the Executive Yuan, for reconsideration of any bill enacted by the Legislative Yuan, etc., etc.

Since our present administrative system is not a cabinet system as that found in Britain as stated above, there is no doubt that the President of the Republic has the full power of commanding, as clearly stipulated in Article 36 of the Constitution.

Inasmuch as the President has the full power of commanding under the letter and spirit of our Constitution, in order to facilitate the exercise of the power, provisions concerning functions and system of the command should be provided in the national defense organization law. We are, therefore, of the opinion that such provisions should specifically made in the draft "National Defense Establishment Law".

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